

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)		
THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
ALL ACTIONS)	
)		

**DECLARATION OF STEVE W. BERMAN IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO THE BMS DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AS TO CLASS 3**

I, Steve W. Berman, duly declare as follows:

1. I am a partner of Hagens Berman Sobol Shapiro LLP, resident in its Seattle, Washington office, and I am co-lead counsel for the plaintiffs in the above-captioned matter. I submit this declaration in support of Plaintiffs' Memorandum in Opposition to the BMS Defendants' Motion for Summary Judgment as to Class3.

2. Attached hereto are true and correct copies of the following exhibits:

Ex. 1	Plaintiffs' Interrogatories to the Fast Track Defendants, Response to Interrogatory No. 11
Ex. 2	Letters from Bristol-Myers Squibb Company dated March 11, 1998 announcing increased prices on select products (BMS/AWP/000092170-186)
Ex. 3	Letters from Bristol-Myers Squibb Company dated June 12, 1998 announcing increased prices on select products (BMS/AWP/0000468-477)
Ex. 4	Letters from Bristol-Myers Squibb Company dated September 12, 1997 announcing increased prices on select products (BMS/AWP/0005335-51)
Ex. 5	Letters from Bristol-Myers Squibb Company dated September 7, 1993 and February 26, 1996, new item product and pricing information

	(BMS/AWP/0030828-42)
Ex. 6	Fax from Bristol-Myers Squibb Company dated July 18, 1995 with information on new products (BMS/AWP/0017275-78)
Ex. 7	Email from Denise Kaszuba to Morgan, Flanagan, Palmer, Pitman, Hamer and Childears dated January 5, 2001 (BMS/AWP/000092406)
Ex. 8	Email from Mimi Leake to Flanagan, Morgan, Kaszuba and Palmer dated March 30, 2001 (BMS/AWP/01071969-70)
Ex. 9	Letters from Bristol-Myers Squibb Company dated October 1993 regarding Vepesid product information (BMS/AWP/00030824-25)
Ex. 10	Deposition of Denise M. Kaszuba taken August 18, 2005 (excerpts only)
Ex. 11	Fax from Medispan dated August 18, 1992 with attached office dispatch dated August 18, 1992 and letters from Bristol-Myers Squibb Company (undated) (BMSAWP/0011245-48)
Ex. 12	Price Increase/ Decrease Notification Process (BMS/AWP/000186646-49)
Ex. 13	Redbook Product Listing Verification dated August 22, 1995 for Bristol-Myers Oncology DIV/HIV Products (BMS/AWP/0005609-22)
Ex. 14	Redbook Product Listing Verification dated August 22, 1995 for Apothecon Products (BMS/AWP/0005571-608)
Ex. 15	Deposition of Dianne C. Ihling taken on August 12, 2005 (excerpts only)
Ex. 16	Deposition of Christof A. Marre taken on August 26, 2005 (excerpts only)
Ex. 17	Deposition of John F. Akscin taken August 11, 2005 (excerpts only)
Ex. 18	Deposition of Marsha Peterson taken April 13, 2005 (excerpts only)
Ex. 19	Memorandum dated May 28, 1993 from S. Tarriff to List Subject: List Price Increase Oral Antibiotics (BMS/AWP/0041865-69)
Ex. 20	Document Reviewing an August 2002 price increase for Glucophage XR (BMS/AWP/00275052-59)
Ex. 21	Email from Greg Fersko to Leas, Ihling and Martino dated April 22, 2002 with AWP Powerpoint Presentation (BMS/AWP/01109780-84)

Ex. 22	Document on Price Establishment (BMS/AWP/00337637-41)
Ex. 23	Powerpoint titled "Sources of Price Data and their relationship to BMS pricing activities" dated April 2002 (BMS/AWP/01088203-11)
Ex. 24	The Network News dated May/June 1994, Spring 2004 and November/December 2004 (Various Bates Ranges)
Ex. 25	The Network News from January/February 1997 to October 2000 (Various Bates Ranges)
Ex. 26	The Network News (BMS/AWP/000095588-611)
Ex. 27	AWP Price Report (BMS/AWP/001486072-73)
Ex. 28	(BMS/AWP/000469286-99)
Ex. 29	Document titled "AWP (Ain't What's Paid)" (BMS/AWP/01327211)
Ex. 30	Powerpoint titled "Understanding AWPs" dated April 2002 (BMS/AWP/00442087-97)
Ex. 31	Email from Michelle Barnard to Seymour and Taliaferro-Jones dated January 10, 2003 (BMS/AWP/000071159-62)
Ex. 32	Document listing contract sale prices for Taxol for each quarter of 2002 and chargebacks for Vepesid injections for the same period (BMS/AWP/000056970-000057015)
Ex. 33	Consorta Proposal (BMS/AWP/01124168-92)
Ex. 34	Consorta Oncology Pricing Sales (BMS/AWP/000059732-41)
Ex. 35	Owen Healthcare bid (BMS/AWP/000052497-500)
Ex. 36	Premier Current Contracts (BMS/AWP/000052508-18)
Ex. 37	MHA Bid Spreadsheet (BMS/AWP/00519439-40)
Ex. 38	Etopophos Launch Plan September/October 1995 (BMS/AWP/0011214-35)
Ex. 39	Document regarding Albuterol (BMS/AWP/0000574-87)

Ex. 40	Email from Christof Marre to Michelle Barnard dated December 19, 2002 regarding Duke University (BMS/AWP/000217841-51)
Ex. 41	Powerpoint titled "Practice Efficiencies & Quality Care Workshop - Of Special Interest To: Physicians, Nurses, Office Managers, Billers" (BMS/AWP/001502270-303)
Ex. 42	Blenoxane Contract Sales 3Q-4Q 2002 (BMS/AWP/000212669-74)
Ex. 43	Attachment G.2.c to the Declaration of Raymond S. Hartman in Support of Plaintiffs' Claim of Liability
Ex. 44	Attachment G.2.b to the Declaration of Raymond S. Hartman in Support of Plaintiffs' Claim of Liability
Ex. 45	2002 SKU Analysis on Vepesid, Mutamycin and Etoposide (BMS/AWP/01123962-74)
Ex. 46	Attachment G.2.d to the Declaration of Raymond S. Hartman in Support of Plaintiffs' Claim of Liability
Ex. 47	Attachment H.2 to the Declaration of Raymond S. Hartman in Support of Plaintiffs' Claim of Liability
Ex. 48	Purchase History Report (BMS/AWP/001484591-613)
Ex. 49	Document titled "Reimbursement in Office Based Oncology; Sales Meeting; July 11,2000; John Akscin" (BMS/AWP/000096632-43)
Ex. 50	Reimbursement document (BMS/AWP/00393437-464)
Ex. 51	Akscin presentation (BMS/AWP/000956887, 00083788-839)
Ex. 52	AWP Cost Differential (BMS/AWP/000097131-37)
Ex. 53	Deposition of Douglas Soule taken April 26, 2005 (excerpts only)
Ex. 54	Memorandum from Barbara Nathan to Akscin and others dated April 6, 2000 (BMS/AWP/000096900-12)
Ex. 55	Document Titled "BMS OVERVIEW: Values Unique to POHMS" (BMS/AWP/000096965-85)

Ex. 56	Powerpoint titled "Taxane Economics: Effect of Dose and Schedule" (BMS/AWP/000157423-35)
Ex. 57	Decision Analysis Worksheet and Other Soule Marketing Materials. (BMS/AWP/001491629-32; Soule Ex. 008; BMS/AWP/001491633-35.)
Ex. 58	Various BMS documents comparing profits on Taxol and Docetaxel (BMS/AWP/001508047-117)
Ex. 59	Email from Janice Suscewicz re: Messge from Ed Penick and Memorandum to U.S. Sales & Marketing Personnel from E. Penick re: Media Coverage – Pharmaceutical Pricing Practices (BMS/AWP/000192875-76)
Ex. 60	Deposition of Erik Schultz taken on February 16, 2006 (excerpts only)
Ex. 61	Deposition of Mark Levonyak taken on July 21, 2005 (excerpts only)
Ex. 62	Deposition of Laura Glassco dated September 1, 2005 (excerpts only)

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of August, 2006.

/s/ Steve W. Berman

STEVE W. BERMAN

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **DECLARATION OF STEVE W. BERMAN IN SUPPORT OF PLAINTIFFS' OPPOSITION TO THE BMS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO CLASS 3**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on August 30, 2006, a copy to LexisNexis File & Serve for posting and notification to all parties.

By /s/ Steve W. Berman
Steve W. Berman
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